UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/50/878
24 February 1996
ENGLISH
ORIGINAL: SPANISH

Fiftieth session
Agenda item 45

THE SITUATION IN CENTRAL AMERICA: PROCEDURES FOR THE ESTABLISHMENT OF A FIRM AND LASTING PEACE AND PROGRESS IN FASHIONING A REGION OF PEACE, FREEDOM, DEMOCRACY AND DEVELOPMENT

Note by the Secretary-General

1. This document contains the fourth report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA).

2. This report covers the period from 21 August to 31 December 1995. It also contains general conclusions on this first year of work since the Mission was set up on 21 November 1994. I shall convey this report to the United Nations High Commissioner for Human Rights, for transmittal to the United Nations Commission on Human Rights. The Director of MINUGUA has been invited to attend the next session of the Commission on Human Rights.

3. I should like to thank the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) for their continued cooperation with the Mission, which is vital for its successful functioning. I am also grateful to the Group of Friends of the Guatemalan Peace Process (Colombia, Mexico, Norway, Spain, the United States of America and Venezuela) for their unswerving support for the Mission and for the Organization's peace efforts; to the Governments of Argentina, Brazil, Canada, Colombia, Italy, Spain and Sweden for the contribution of their police personnel to the Mission; and to the Governments of Brazil, Spain, Sweden, Uruguay and Venezuela for having provided the services of their military officers.

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Annex

Fourth report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala

I. INTRODUCTION

1. The United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA) has continued to carry out the mandate given to it by General Assembly resolution 48/267 of 19 September 1994 of monitoring compliance by the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) with the Comprehensive Agreement on Human Rights (hereinafter referred to as the Comprehensive Agreement), signed by the two parties on 29 March 1994 (A/48/928-S/1994/448, annex 1).

2. While this report covers the period from 21 August to 31 December 1995, it also takes into account the work done by the Mission since it was set up on 21 November 1994 and, accordingly, contains general conclusions and recommendations arising out of the past 13 months of work and based on the Mission's four reports, three of which were already issued (A/49/856 and Corr.1, A/49/929 and A/50/482).

3. Pursuant to its mandate, the Mission has continued its bilateral contacts with each of the parties, through monthly meetings with the President of the Republic and, in Mexico, with the URNG General Command. Similarly, close cooperation has been maintained between the Mission and its official counterpart in the Government, the Presidential Human Rights Committee (COPREDEH), and regular meetings have been held with ministries and State bodies involved in the protection of human rights. As a new aspect of its field work, the Mission has, during this latest period, visited a number of URNG camps in order to discuss, at the regional level, complaints received and other matters of particular relevance to the task of verification.

4. With the signing on 31 March 1995 of the Agreement on Identity and Rights of Indigenous Peoples (hereinafter referred to as the Agreement on Indigenous Rights) (A/49/882-S/1995/256, annex), the Mission was requested to verify those aspects of the Agreement which relate to human rights and are considered to have immediate application. At the request of the Secretary-General (A/49/955), additional resources were allocated to the Mission to enable it to continue to carry out its mandate, including those new verification activities. In addition, in its resolution 49/236 B of 14 September 1995, the General Assembly, inter alia, emphasized the importance of the Agreement on Indigenous Rights and decided to authorize the extension of the Mission's mandate to 18 March 1996. The Assembly also called upon the Government of Guatemala and URNG to implement the Mission's recommendations and to comply fully with their commitments under the Comprehensive Agreement and with the human rights aspects of the Agreement on Indigenous Rights. It welcomed the efforts of international and regional financial institutions to mobilize resources for the implementation of the

Guatemala peace agreements, as well as the voluntary contributions already made to the Trust Fund for the Guatemalan Peace Process established by the Secretary-General, and invited the international community to make further contributions to the Fund.

II. CONTEXT IN WHICH THE MISSION IS OPERATING

5. The period covered by this report coincided with the end of the Government of President Ramiro de León Carpio, who had been appointed by the Congress of the Republic in 1993, thereby restoring constitutional government.

6. The Xamán tragedy on 5 October, described by the Mission as the gravest incident since its establishment, led directly to the resignation of the Minister of Defence (see paras. 25 to 32).

7. The Mission's third report (A/50/482), which was issued on 12 October 1995, was widely covered in the media and well received by the parties and various sectors of society, which acknowledged the Mission's impartiality and professionalism.

8. The peace negotiations continued and, since April 1995, the parties have been discussing the item "Socio-economic aspects and agrarian situation". Recently, some sectors which question the peace process brought an action of unconstitutionality against the government bodies set up for the negotiations and filed a judicial complaint against the Chairman of the Peace Commission; both actions prompted reactions favourable to the peace process. The Constitutional Court ruled out the urgent measures called for in the first action and has yet to hand down a final decision.

9. URNG declared a unilateral suspension of hostilities from 1 to 12 November 1995 and from 24 December 1995 to 8 January 1996, on the occasion of the general elections. Prior to the first of these suspensions, there was a relative increase in offensive military action by URNG.

10. The Office of the United Nations High Commissioner for Refugees (UNHCR) reports that 9,524 refugees returned to Guatemala in 1995, a figure significantly higher than that for previous years. The repatriation process continued despite the persistence of problems of access to land and serious incidents such as that at Xamán (see paras. 25 to 32).

11. In the days following that incident, the visit to Guatemala of the Independent Expert, Mrs. Mónica Pinto, attracted widespread attention. She held a number of working meetings with the Director of the Mission during her visit.

12. In November, the United Nations Committee against Torture expressed concern at the persistence of torture in Guatemala.

13. The continuing high level of violence and lack of public safety was one of the issues of greatest public concern. According to the National Police, between 1 September and 20 December 1995, 959 people were killed and 1,455 injured as a result of criminal acts, and between 1 September and

25 December 1995 there were 19 kidnappings in the capital city alone, a figure which does not reflect the full magnitude of the problem, since most kidnappings go unreported.

14. The President's decision to demobilize the military commissioners as of 15 September 1995 was followed on 22 November by their legal dissolution by Congress.

15. The problem of impunity was discussed in meetings between the presidents of the executive, legislative and judicial branches and, in November, the President of the Republic instituted formal proceedings, which are still pending, to remove the Attorney General of the Republic from office.

16. On 11 November, the MINUGUA regional office in the capital city was machine-gunned, although no one was hurt. As of the date of this report, the identity and specific motives of the attackers are unknown.

17. The period was dominated by the election campaign. In the 12 November 1995 elections, Guatemalans voted to elect a President and Vice-President of the Republic, deputies to the Congress and the Central American Parliament, and mayors. Fifty-three per cent of registered voters did not vote. Since no candidate obtained a majority in the presidential election, a second round of voting took place on 7 January 1996. The candidate of the Partido de Avanzada Nacional (PAN), Alvaro Arzú Irigoyen, was elected with 51.2 per cent of the vote; the Frente Republicano Guatemalteca (FRG) obtained 48.8 per cent, and 63 per cent of registered voters did not vote. In the November legislative elections, PAN won an absolute majority in Congress with 43 of the 80 seats, followed by FRG with 21 seats. Various sectors emphasized the importance of the incorporation into Congress of the Frente Democrático Nueva Guatemala (FDNG), which won six seats. The elections were held in the presence, among others, of observers from the Organization of American States and the European Union, who concluded that the election had been well managed by the Supreme Electoral Tribunal and conducted in an atmosphere of normality (see paras. 45 to 48).

18. President Arzú took office on 14 January 1996. In his inaugural speech, he emphasized his commitment to "fighting impunity head on", eradicating discrimination against the indigenous population and working for peace.

19. Since the end of the period covered by this report, the following events have occurred which the media and organizations working for the defence of human rights view as potential contributions to the fight against impunity and to the strengthening of civilian authority:

(a) The decision by the Ministry of the Interior, recognized publicly by the Mission, to dismiss as of 22 January 1966 more than 100 National Police officers implicated in human rights violations, acts of corruption and other crimes;

(b) The decision by th President of the Republic to make changes in the senior ranks of the army;

(c) The 22 January 1996 decision by the Jalapa Court of Appeal to transfer the investigation of the events at Xamán from military jurisdiction to an ordinary criminal court.

III. VERIFICATION OF RESPECT FOR HUMAN RIGHTS AND OF FULFILMENT OF THE OTHER COMMITMENTS MADE IN THE COMPREHENSIVE AGREEMENT

Commitment I. General commitment to human rights

20. During the period from 21 August to 31 December 1995, the Mission received nearly 3,000 complaints, 368 of which were admitted for verification. Compared with the previous, three-month, period, there was a 39 per cent increase in the number of complaints received and a 12.3 per cent reduction in the number admitted. In 62 of the 368 cases admitted during this period, it was established that a human rights violation had occurred.

21. As in previous reports, some cases are presented here briefly for the sole purpose of illustrating relevant aspects of each category. In any case, the report's conclusions are based on cases verified, and cases currently under verification, as a whole.

22. In obtaining evidence for the verification of this commitment, the Mission faces the persistence, characteristic of Guatemala, of large numbers of homicides, death threats, kidnappings and other serious crimes which, because they are committed by ordinary criminals or unidentified persons, are not recorded as human rights violations which are directly attributable to agents of the State or politically motivated, but are nevertheless a result of the State's failure in its duty to provide guarantees and to prevent, investigate and punish crime.

Analysis of the verification of rights accorded priority under the Comprehensive Agreement

1. Right to life

23. During the period in question, 107 complaints of violations of the right to life were admitted, equivalent to 29 per cent of the total. These included deaths in violation of legal guarantees and extrajudicial executions (30), attempted extrajudicial executions (14) and death threats (63).

24. With regard to complaints described in previous reports (A/49/856 and Corr.1, A/49/929 and A/50/482), it should be noted that, in the majority of cases where the Mission, pursuant to its mandate, has verified that a violation occurred, investigations by State bodies have not led to the identification and punishment of those responsible.

(a) Extrajudicial executions or deaths in violation of legal guarantees

Case 1

25. On 5 October, 25 members of a patrol from the Rubelsanto military base in military zone 21, including a minor under the command of a second lieutenant, entered the "Aurora 8 de Octubre" returnee community in Xamán, Alta Verapaz. The tense situation which this created culminated in the tragic deaths of 11 members of the community, including two children, at the hands of the patrol. Thirty people were injured, including three soldiers who were wounded by their fellow soldiers.

26. The patrol's itinerary, which was communicated to the battalion commander on the morning of 3 October, included coordinates corresponding to the location of the returnee community. At midday on 5 October, the soldiers passed close by the first houses in the community, causing alarm among the inhabitants, who viewed the military presence as a violation of their property and of the 8 October 1992 agreements (signed between the Government of Guatemala, represented by the National Commission for Returnees, Refugees and Displaced Persons, and the Permanent Commissions of Guatemalan Refugees in Mexico and recognizing the civilian and peaceful nature of the repatriation process and of the returnee population). Versions differ as to why the patrol entered the community. As they went through, the number of residents and the accusations and protests at the soldiers' presence grew.

27. The population asked the soldiers to put down their weapons and to stay there until MINUGUA and UNHCR could verify the alleged violation of the 8 October 1992 agreements. After half an hour of argument, the members of the patrol, surrounded and possibly frightened, attempted to leave, pushing the villagers with their rifles.

28. When one villager seized the barrel of the sergeant's weapon, trying to take it away from him, the sergeant ordered another patrol member to open fire. The other soldier did so, killing three people who were nearby, one of whom was shot in the back while running away. This apparently caused a chain reaction among the other soldiers, who started shooting indiscriminately in all directions.

29. Having broken out of the ring of people and covering their retreat with heavy gunfire, most of the patrol left the village by the same route by which they had entered, taking with them three soldiers who had been wounded by their fellow soldiers' stray bullets. Two hundred metres from the scene of the first shootings, a soldier deliberately shot at an eight-year-old boy, Santiago Pop Tut, hitting him in the wrist. When the boy tried to run away, the soldier came back and shot him in the chest and head at close range, killing him.

30. Two teams of observers from the Mission met and questioned the soldiers as they were returning to their base. Six soldiers took a different route and returned to base the following day. MINUGUA reached Xamán two hours after the incident and, in coordination with UNHCR, evacuated the wounded civilians. The observers carried out a thorough inspection of the scene of the incident and

took statements from more than 15 residents, from almost all the wounded evacuees and, at the invitation of the military authorities, from the members of the patrol. A number of soldiers stated confidentially that, on their way back to base and also at the base, they had been given instructions on what they should say.

31. There is no evidence that the villagers were armed nor any mention of physical attacks on the soldiers, except the aforementioned attempt to take the sergeant's weapon away from him. At the scene of the incident, 5.56 mm cartridge cases were found, corresponding to the ammunition normally used by the army; these were handed over to the judicial authorities.

32. The Mission's rapid arrival on the scene and the various verifications carried out immediately enabled the Mission to issue a public report on 10 October, describing the results of the preliminary verification and the magnitude of the incident. The main finding was that members of the military patrol had committed serious violations of the right to life by deliberately opening fire on the members of the "Aurora 8 de Octubre" community; however, there is no evidence that the violation was planned at a higher level (see para. 41).

(b) Attempted extrajudicial executions

Case 1

33. On 26 November, Jorge Villatoro was publicly attacked by two soldiers from the Valparaíso base in the town of La Democracia, Huehuetenango. A second lieutenant, who was drunk, aimed his pistol at Villatoro's head, forcing him to walk towards the army base and hitting him. When he tried to escape, the second lieutenant came after him and when the victim got into a friend's vehicle, the soldier shot at him without hitting him. Finally, the second lieutenant and four soldiers apprehended the victim and took him to the police station. The police officer on duty refused to detain Villatoro illegally and confirmed that the second lieutenant had abused his authority. A few days later, officials of the military zone acknowledged the incident and offered the victim medical treatment, while the victim handed over to them the only cartridge case from the shot fired by the officer. As of the time of drafting this report, the competent authorities had not begun an investigation and the only copy of the police report had been sent to the military zone "as a matter of routine procedure".

(c) Death threats

Case 1

34. On 6 November, a member of the Fundación Myrna Mack non-governmental organization who was holding a workshop on human rights in Santa Barbara, Huehuetenango, was summoned to the mayor's office, where he was met by municipal officials and members of the Voluntary Civil Defence Committee (CVDC). There, he was accused of belonging to URNG because he was carrying a book on the rights of the Maya people and a copy of the Agreement on Indigenous Rights. The CVDC members disagreed as to whether they should organize a "bandopúblico" in which

the person is walked publicly through the streets, and which on occasions has ended in a lynching) or whether they should kill him. When the victim left the mayor's office, he was verbally abused and struck in the face, while the municipal police stood by and did nothing. When he was summoned to the mayor's office again on 14 November, he arrived with representatives of the Fundación, the Office of the Counsel for Human Rights, the Public Prosecutor's Office and the Mission. Once again, the discussion became heated, and a number of those present were threatened; even MINUGUA was accused of being composed of guerrillas and its observers received death threats. On 24 November, a town meeting was held and was attended by the commander of the military zone and the Deputy Director of the Mission; the situation was partially resolved, although the threats against the victim did not end completely. The Public Prosecutor's Office and the National Police have not investigated the incident properly and the verification by MINUGUA observers faced obstruction and threats.

2. Right to integrity and security of person

35. During the period under review, 111 complaints of violations of this right were admitted, equivalent to 30.1 per cent of the total. The practice of torture persists, particularly in connection with police action against ordinary crime. Of the cases of ill-treatment verified, 44.8 per cent (26) occurred in the context of arbitrary detention and the National Police was responsible for 44.26 per cent of them.

(a) Torture and other cruel, inhuman or degrading treatment

Case 1

36. In August, Elin Robledo López and Douglas Robledo López reported that they had been tortured with beatings and electric shocks during their detention on 22 July, by members of the National Police at Cuilapa, Santa Rosa. A month after the incident, the marks of their injuries were still visible. No forensic medical examination was carried out. The victims were released on 1 September. The Office of Professional Accountability of the National Police determined that the officers responsible for the illegal detention, beatings and falsification of police records were the officer third-in-command at Cuilapa, the officers first-in-command and second-in-command at Berberena and three members of the local police at Cuilapa. The investigation established that the victims had not been apprehended in flagrante delicto, as the police report claims, but while they were returning from work. The judge insisted that he was not competent to deal with what was a "purely police" matter. The victims have not pursued the case, with the result that it is now filed with the Public Prosecutor's Office.

(b) Other threats to the right to integrity and security of person

Case 1

37. On 24 September, in Los Amates, Izabal, four heavily armed individuals entered a house, beat the owner and raped his wife and 13-year-old stepdaughter. On 26 September, the two women went to the office of the justice of the peace in Los Amates. The senior official asked to speak to the minor alone and, once she

was in his office, raped her, causing serious injuries. The victim was admitted to Zacapa Hospital. On 5 December, a warrant was issued for the arrest and dismissal of the official, but the arrest has yet to be made since he has allegedly fled. As a result of this incident, the family was threatened repeatedly by a former military commissioner. The representative of the Puerto Barrios public prosecutor's office requested the medical report on the girl, but Zacapa Hospital denied that the medical examination had been conducted there; this contradicts the finding of the Mission's verification, which was that the girl's clinical record contains the results of the medical examination.

3. Right to individual liberty

38. There were 47 complaints of violations of this right, representing 12.7 per cent of the total number of complaints admitted. In a significant number of cases, the police violated legal regulations and fundamental guarantees of the detainee in making arrests. Most of these cases are characterized by a broad interpretation of the concept of detection in flagrante delicto and by the use of suspicion as a generic reason for arrest. The fact that such arrests are made without a court warrant undermines the authority of the courts.

Case 1

39. On 31 August, the Jutiapa police received an anonymous telephone call stating that a child had been kidnapped. Without obtaining a warrant from the court or notifying the Public Prosecutor's Office, the police raided the home of Gerónima Vásquez and arrested her and her children Lubia and Javier Martínez, along with a three-month-old child. The police illegally handed the infant over to another family, claiming that he was a missing child. When the above-named persons had been in detention for two months, DNA evidence was obtained proving that Lubia Martínez was the child's mother, after which the child was returned to her and the other detainees were released. The Public Prosecutor's Office called for the arrest of the police officers linked to the case, and on 3 December, in Zacapa, agents of the Office of Professional Accountability arrested the former departmental chief of police of Jutiapa. However, he was released on bail the next day.

4. Right to due process

40. During the period in question, 61 complaints of violations of this right were admitted, accounting for 16.5 per cent of the total number of complaints. Most of them concern the State's legal duty to investigate and punish crimes, especially violations allegedly committed by State agents. Verification reveals that procedural steps essential for investigating the facts and trying the culprits are still not being carried out. Moreover, the failure to issue arrest warrants in a timely manner hampers the investigation and punishment of crimes.

Case 1

41. Verification of the trial in the Xamán case was initially blocked by the military judge, who, at the request of the defence attorneys, barred the Mission from observing the defendants' depositions. Once that problem was solved, the Mission noted a number of factors that hindered the progress of the judicial investigation: the soldiers had been instructed to give the same distorted version of events, pressures and threats were brought to bear on the prosecutor, and the Public Prosecutor's Office openly questioned the military judge's impartiality. Other irregularities included the fact that autopsies were performed that did not meet the necessary technical requirements, the army unduly delayed handing over the weapons used, the forensic physician from the Public Prosecutor's Office was not allowed to enter the hospital where the wounded soldiers were and the wounded returnees were subjected to harassment. Moreover, the legal characterization of the offences, which was approved by the judge over the prosecutor's opposition, minimized the seriousness of the acts committed. Lastly, the right to legal counsel could be prejudiced by the fact that the 26 soldiers are being defended as a group by two or three attorneys; this is in principle inadmissible under national law unless there is clearly no incompatibility.

Case 2

42. In the verification of the URNG complaint on the death of guerrilla Emiliana Patrocinia Mazariego Hernández (A/50/482, annex, para. 150), personnel of the Las Pozas military base and other eyewitnesses confirmed that the justice of the peace of Sayaxché, Petén, who signed the certificate of removal of the body, had not been present at the actual removal. The document notes that bullet wounds and fractures were found, but not that the cranial cavity was caved in and broken or that the lower jawbone was destroyed, as confirmed when the body was exhumed one month after the victim's death. Because the exhumation, requested on 25 August by the prosecutor and considered essential for elucidating the circumstances of death, served only to establish the victim's identity, its objective was not achieved. The justice of the peace instituted the proceedings for "activity against the domestic security of the nation", which involves investigating the criminal liability of the deceased - which, in any case, expired upon her death - and not the circumstances of her demise. The Public Prosecutor's Office requested that the characterization be changed to "homicide". The Mission gathered enough evidence to conclude that, owing to the action taken by the justice of the peace, the serious allegations of torture had not been investigated, but the Supreme Court of Justice, through the Office of Court Supervision, sided with the justice, who had maintained from the outset that deaths which occurred during armed confrontations were not subject to judicial investigation. The same questions persist with respect to another case, reported by URNG as the death by torture of a combatant in Ixcán, Quiché, following his capture by the army, which has not been investigated by the courts. Some judges still persist in the practice of not investigating cases of death "as a consequence of the armed conflict", even though this practice has not been authorized. The Office of Court Supervision also endorsed the actions of the military judge in charge of the Xamán case (see paras. 25 to 32) when he was accused of obstructing the investigation by the Public Prosecutor's Office.

Cases cited in previous reports under this commitment

43. Although some trials have been resumed and others have been concluded with judicial decisions that spell moderate progress, cases that have prompted public outcry are still characterized primarily by delays in carrying out the formalities needed to pursue the investigation; an unwillingness, on the part of government authorities, to cooperate with judges; and the use of pressure and threats against various persons taking part in the proceedings. Below are some examples:

(a) In the trial for the disappearance and death of URNG commander Efraín Bámaca (A/50/482, annex, paras. 61 and 62), the body still has not been exhumed; the military judge seems to be delaying this necessary step. Judges of the Court of Appeal reported that they had been followed and that the licence numbers of their vehicles had been recorded. During the hearings, the defendants were accompanied by armed guards;

(b) In the case of the murder of Jorge Carpio Nicolle (A/50/482, annex, para. 64), the Court of Appeal decided to restart the trial beginning with the taking of evidence, which would allow essential testimony to be given;

(c) In the trial for the murder of Mario Alioto López Sánchez (A/50/482, annex, para. 66), after months of inactivity, on 9 November the Public Prosecutor's Office brought formal charges against 7 of the 10 suspects. Students at San Carlos University, who are an interested party in the case, and the University's lawyer were threatened;

(d) In the trial for the murder of Myrna Mack (A/50/482, annex, para. 63), depositions were made by State officials, including the President of the Republic, Ramiro de León Carpio. It is disturbing that some ministries have been slow to respond to the prosecutor's official communications, particularly the Ministry of Defence, which declined to do so for reasons of national security. The complainant raised a question of competence before the military judge in charge of the case, claiming that his jurisdiction runs counter to the principles of equality before the law and judicial independence, but her application is still pending before the Supreme Court of Justice. There was another case of harassment against a member of the Public Prosecutor's Office linked to the case;

(e) In the trial for the murder of Epaminondas Gonzáles Dubón (A/49/929, annex, para. 62), in which the verification found a number of irregularities, the two defendants were sentenced to 16 and 24 years in prison. MINUGUA learned of other alleged perpetrators mentioned in police reports and expressed concern about that fact to the Ministry of the Interior, which promised to investigate the matter with the Public Prosecutor's Office. To date, no information that such an investigation was made has been received;

(f) After months of inactivity in the trial concerning the death of the workers on the San Juan del Horizonte farm (A/50/482, annex, para. 65), the police officers linked to the eviction were summoned again. On 11 November, a pre-trial detention order was issued against a high-ranking officer of the

National Police. Two officers were excused from appearing. The new prosecutor has helped to pursue the investigation;

(g) The trial for the murder of Manuel Saquic Vásquez (A/50/482, annex, paras. 33 and 34) has been at a standstill since 9 August, when the judge in the case ordered the detention of the former military commissioner accused of the crime. Police efforts to arrest him were unsuccessful. In November, members of the suspect's family informed the police and the prosecutor of his enforced disappearance.

5. Political rights

44. In accordance with its mandate, the Mission closely monitored the due exercise of political rights during the election campaign and the actual elections, while other international entities took charge of observing and evaluating the electoral process as a whole.

45. According to the electoral observer missions, the elections took place in an atmosphere of normality (para. 17); MINUGUA received no complaints of violations of specifically political rights, although acts of violence against individuals involved in political activity were noted during the election campaign. The unilateral suspension of hostilities by URNG from 1 to 12 November and from 24 December 1995 to 8 January 1996, and the appeal to voters to participate in the first round, helped to ensure the normal exercise of political rights.

46. The low voter turnout illustrates the limited exercise of the right to vote. Turnout was 47 per cent of registered voters: higher than for the 1994 elections, but lower than for the first round in 1990. In the second round, voter turnout fell to 37 per cent. Moreover, 29 per cent of the voting-age population are still not on the electoral roll (A/50/482, annex, paras. 69 to 72), largely because they lack basic documentation; it is hoped that this problem will be solved in part by the Law on the Personal Documentation of the Uprooted Population, promulgated on 25 November 1995.

47. The Mission is monitoring the progress of the draft amendments to the Law of 5 April 1994 on Elections and Political Parties, since they refer to measures that could increase citizen participation and remove obstacles, identified by the Mission's verification, to the proper exercise of political rights. The draft creates a single personal identity document, issued by the Supreme Electoral Tribunal; broadens the Tribunal's powers to carry out voter registration and public information activities; and increases the number of polling stations, "taking into account the criterion of population concentration and distance".

6. Freedom of expression

48. During the period in question, two serious complaints regarding this right were admitted. The overall level of violence and intimidation is affecting the work of journalists and freedom of expression. In addition to the case

described below, the Mission is verifying complaints of wire-tapping received from the newspaper Siglo Veintiuno.

Case 1

49. On 3 September, unidentified persons entered the offices of the Foreign Centre for News Reports on Guatemala (CERIGUA). The fact that a computer containing the agency's database and list of contributors was stolen while a number of valuables were left untouched seems to confirm that the act was politically motivated. The Centre's headquarters was guarded before and after the burglary. The official investigation is at a standstill. The police took some technical steps, but the Public Prosecutor's Office did not show a willingness to look into the case.

7. Freedom of movement

50. During the period under review, the Mission received two complaints of violations of this right, both attributed to URNG. In other cases where the Mission learned that guerrillas had set up roadblocks or occupied residential areas for propaganda purposes, it found that the movement of vehicles and persons had been restricted.

8. Freedom of association

51. The Mission received nine complaints of violations of this right. Verification revealed cases of harassment against non-governmental human rights organizations (see paras. 34 and 78) and some cases pointing to conflicts between administrative authorities and trade unions, which could affect the right to freedom of union activity.

Commitment II. Commitment to strengthening institutions for the protection of human rights

Judiciary and Public Prosecutor's Office

52. Further cases of intimidation and threats against judges and prosecutors were recorded. The seriousness of this situation is heightened by the involvement of State agents in some cases, especially where the alleged participation of members of the army and National Police is being investigated.

53. The Government has failed to implement an effective overall policy, covering both the prevention and the investigation of such acts, to strengthen the exercise of the functions of human rights protection assigned to the judiciary and the Public Prosecutor's Office.

54. The Mission noted with concern the Attorney General's complaints that the Government was exerting pressure in order to delay the investigation of cases involving army officers and a high-ranking government official, as well as his reports of being followed and subjected to intimidation and death threats after making those statements.

Counsel for Human Rights

55. During the period under review, State authorities continued to ignore recommendations and requests for information submitted by the Counsel for Human Rights. According to the Counsel, the investigation of complaints has been delayed and even halted by a lack of cooperation on the part of the authorities asked to provide information, especially the judiciary, the Public Prosecutor's Office and the National Police. None the less, the Mission has noted, as a positive development, that the Office of the Director of the National Police has begun to act upon most of the Counsel's recommendations concerning the dismissal of police officers.

Commitment III. Commitment against impunity

56. Verification indicates that the general situation of impunity persists and that no comprehensive plan to correct it has been designed or implemented. However, there is greater awareness of the need to combat impunity, as reflected in the following positive factors:

(a) The periodic meetings among the President of the Republic, the President of the Supreme Court and the President of Congress to discuss the fight against impunity, which reflect the interest of the highest State authorities in dealing with this problem;

(b) The submission to Congress by the executive branch of the Inter-American Convention on Forced Disappearance of Persons; the government agreement demobilizing the military commissioners; and the enactment by Congress of a law providing for their final dissolution;

(c) A number of incipient and localized improvements in the poor coordination between the Public Prosecutor's Office and the National Police, particularly in rural areas, which have led to significant advances in serious cases;

(d) Progress in the investigation of some cases that had been stalled for months and the launching of the activities of a committee for coordination between the Public Prosecutor's Office and the Mission, whose work includes the consideration of cases in which the Mission has found shortcomings.

57. The population still lacks confidence in the administration of justice in general. The failure to guarantee security of person and the impunity enjoyed by perpetrators of serious crimes is fostering the application of "private justice" and so-called "social cleansing" operations.

58. The lack of coordination among the Public Prosecutor's Office, the National Police and the judiciary in investigating and prosecuting crime has been identified by the Mission as a root cause of their defective functioning.

59. Although the new Code of Criminal Procedure stipulates that the Public Prosecutor's Office is required to take all relevant and useful steps to determine whether an illicit act has been committed, the Mission found that in many cases, when that institution receives reports of serious human rights

violations that are automatically subject to prosecution, it acts only at the request of a party concerned. Factors which make it difficult for prosecutors to discharge their duty include: (a) threats, which may even put their lives at risk, especially when the alleged perpetrators are military personnel or economically powerful individuals; (b) the sometimes justified tendency to attribute their inaction to logistical problems; (c) the need for more training; and (d) cases of corruption.

60. Many judges carry out their mission according to law and the ethical principles of their profession. Nevertheless, verification of the right to due process has yielded evidence, in a number of cases, of judicial actions which foster impunity and which have not been punished (see paras. 41 and 42). The Mission is also concerned about cases where court files involving State agents have been lost and such losses have not been properly punished. In many cases, the adherence of some judges to the former inquiry procedure and their reluctance to accept the new role of the Public Prosecutor's Office in criminal investigations have hindered the implementation of the new Code of Criminal Procedure and exacerbated doubts about the effectiveness of the judicial system.

61. In addition, the National Police still lacks credibility and trustworthiness in the eyes of the general population, owing to its flawed performance and to the persistence of the problems identified in previous reports (see paras. 68 et seq.).

62. Verification has revealed new instances of the protection which the army extends to some of its personnel who have been implicated in crimes.

Case 1

63. On 12 August, a woman was shot by an army officer in Joyabaj, Quiché. Hours later, he was arrested by the police. Even though the justice of the peace characterized the crime as "wounding with grievous bodily harm" (the victim had to have a kidney removed and suffered intestinal damage), the military judge characterized it simply as "wounding". The victim's family was summoned to the military zone, where they were asked to settle the matter in exchange for a sum of money to be paid by the wife of the accused. When the family refused, a soldier repeatedly and threateningly manipulated his weapon. After receiving a second offer of money endorsed by an assistant prosecutor, the victim dropped her complaint and accepted the money, explaining that she needed it for medicine. The assailant was freed, even though the crime in question was a publicly actionable offence. The only measure the army took was to place the officer in detention for two months for absence from the base, drunkenness and "misuse of a weapon".

64. During the period under review, the Mission received more reports of cases where army officers accused human rights organizations, returnees and even the Mission of supporting URNG. This rhetoric, far from promoting peace and reconciliation, fosters attitudes of fear and distrust that may be contributing factors in deplorable incidents such as the one at Xamán. The prevalence of this rhetoric is illustrated by the confidential survey which the army conducted among some community leaders in Ixcán, asking which non-governmental organizations favoured groups opposed to the State, in which the only possible

answers were "(a) yes" or "(b) have heard that they do"; respondents were warned not to mention the survey to MINUGUA.

65. The demobilization of military commissioners was hindered, especially in remote areas of the country, by the Government's failure to publicize the measure and by the former commissioners' determination to retain their authority. The Mission verified some cases where commissioners have kept their credentials and their weapons, and others where military authorities have stalled the process of collecting weapons by arguing that the former commissioners' credentials were valid. In addition, there were more complaints that military commissioners had violated human rights (see para. 34).

66. The Mission continues to receive complaints against CVDC members for publicly actionable offences which are not reported by the victims or investigated by the authorities. The arrest warrants issued against some of these offenders have not been carried out, as in the case of the members of the patrol in Las Majadas, who were responsible for the disappearance and death of two United States citizens in April 1985 (see para. 89).

Promotion of the recognition of extrajudicial executions and enforced disappearances as crimes against humanity

67. On 1 September, the Government sent the Inter-American Convention on Forced Disappearance of Persons to Congress for consideration and ratification. This was an important step in relation to the commitment to foster, in the international community, recognition of enforced disappearance as a crime against humanity. The Mission has no new information on the recognition of extrajudicial execution as a crime against humanity (Comprehensive Agreement, sect. III, para. 2).

Commitment IV. Commitment that there are no illegal security forces and clandestine structures; commitment to continue with the purification and professionalization of the security forces; regulation of the bearing of arms

68. In its first report (A/49/856 and Corr.1, annex, para. 174), the Mission emphasized that the professionalization of the police requires a public security programme that delimits police functions and military functions. The security forces' lack of resources has led to the use of the army and the mobile military police to man checkpoints and security patrols. Moreover, there are no standard minimum qualifications, backed up by a mandatory training programme, required for the admission or promotion of members of the police.

69. The Minister of the Interior and the Director of the National Police have reiterated instructions to police officers to refrain from the excessive use of force, thereby ensuring greater respect for the physical integrity of persons in activities to maintain order during public demonstrations or evictions.

70. According to the Office of Professional Accountability, nearly 530 police officers were sent to court for various crimes, including 28 for homicide or murder and 55 for robbery. However, the purification of the police force did not bring with it the criminal prosecution of police implicated in criminal acts. According to police authorities, it has not been possible to secure the

final dismissal of 68 members of the police because no response has been received from the Labour and Social Security Tribunal.

71. The image and activities of the police are seriously undermined by cases where their members are involved in corruption and criminal acts. Often, criminal organizations have contacts with or include members of the police, even high-ranking ones, who have police or criminal records.

Case 1

72. On 20 August, two Colombian tourists were kidnapped as they left the international airport; they were then raped and robbed of their belongings. Their complaint led to the arrest of members of a gang operating at the airport, which included a police officer. Similar acts were reported weeks later, but the phenomenon could not be stopped.

73. During the period under review, the percentage of weapons confiscated by the police increased considerably. However, in a trend which ran counter to this effort, official figures show that nearly 37,000 firearms were sold by private companies during the year. Considering that, according to official data, the police confiscated about 2,000 weapons over the same period, the number of firearms in the hands of private individuals grew by more than 34,000 during the year, whereas only 5,000 licences were granted. Little progress has been made, especially considering that the Public Prosecutor's Office estimates the number of privately owned weapons at nearly 250,000. Any police plan will be fruitless unless further efforts are made to control and regulate the sale of firearms and to monitor and step up the requirements for the granting of licences. The bill prepared by the Ministry of Defence's Department for the Control of Weapons and Ammunition to tighten regulations on the sale of weapons to individuals is insufficient, since existing legislation is too permissive.

Commitment V. Commitment to guarantee freedom of association and freedom of movement

74. This commitment covers three areas: (a) voluntary membership in CVDCs; (b) human rights violations perpetrated by CVDC members; and (c) the establishment of new CVDCs. Since the Comprehensive Agreement gives the Counsel for Human Rights a crucial role in verifying the first two areas, the Mission defers to the Counsel's findings.

75. The Mission considers that the Government has observed its unilateral commitment not to encourage the establishment of new CVDCs. However, it is concerned about announcements of the establishment of other bodies that would carry out similar functions, as well as propaganda campaigns in favour of civilian patrols which, in some cases, would receive instruction from army personnel in the use of firearms.

76. The Mission was informed that mayors and members of some CVDCs had requested that those groups be dissolved voluntarily. According to the Counsel for Human Rights, one request for the dissolution of a CVDC was carried out during the period in Tezulutlán, Sayazche, Petén. Nine requests were submitted during the year, four of which were carried out, affecting 500 patrol members.

In other cases, army intervention prevented the dissolution of CVDCs. Some groups dissolved spontaneously by simply handing their weapons over to the military authorities, as in the case of the Las Majadas CVDC in Huehuetenango on 23 November.

Commitment VI. Commitment concerning military conscription

77. Although forcible recruitment has virtually ceased, the Mission received five complaints during the period, verification of which revealed some irregularities but not forcible recruitment. It was found that military commissioners, prior to their demobilization, had summoned youths to military bases to lecture them on their duty to serve in the armed forces.

Commitment VII. Commitment to safeguard and protect individuals and entities working for the protection of human rights

78. During the period under review, there were cases in which human rights activists were intimidated and threatened by unknown persons who raided their premises or sent them anonymous letters. There were also cases involving CVDC members. In addition to the incident in Santa Bárbara (see para. 34), one illustrative case is that of the consortium of non-governmental organizations known as "Pueblos Unidos", whose headquarters was raided by unidentified persons who went through their files, without taking anything of value.

Commitment VIII. Commitment to compensate and/or assist the victims of human rights violations

79. The Government reported that it was complying with this commitment primarily through the National Fund for Peace. The Mission appreciates this effort, but reiterates that strict compliance with the commitment requires a plan of action that includes the proper identification of categories of victims, as well as measures and programmes for assisting and compensating them.

Commitment IX. Commitment concerning human rights and the internal armed conflict

80. In the months preceding the suspension of hostilities (see para. 45), there was a relative increase, on the part of URNG, in armed clashes, harassment, the installation of roadblocks and the occupation of residential areas for propaganda purposes which sometimes endangered civilians, for instance, when they were caught in the line of fire or when military units were located near populated areas.

81. The Mission expressed concern to the army about the danger which the installation of new army bases in populated areas poses for the civilian population. It appreciates the withdrawal of guards from the Fray Bartolomé de las Casas electric power plant in Alta Verapaz, as well as the URNG commitment to stop considering that plant a military target. The army also removed the military base in Guineales, Sololá, whose members are alleged to have violated human rights, according to complaints currently being verified. Moreover, the Mission expressed its concern about the unusual military presence in San Juan

Ostuncalco, Quetzaltenango and Santa Lucía la Reforma, to which the army replied that these were not permanent military bases.

82. During the period under review, the Mission received 10 complaints of threats and damage to farms connected with collection of the so-called "war tax" by URNG. The Mission stated publicly and during meetings with URNG that, in its view, such actions violate the Comprehensive Agreement. In some cases, acknowledged by URNG, the intensity of the pressure and threats was not as great as in the past. In others, under verification in Petén, for which the URNG Command denies responsibility, some threats to burn houses were actually carried out.

83. Although it was established that some of the incidents involved ordinary criminals, there is no doubt that the existence of the "war tax" is a factor that contributes to the lack of public safety, encourages the growth of ordinary crime and sometimes hampers action by the police. Therefore, by putting a stop to this practice, URNG would be making a positive contribution to the fight against impunity.

84. Four new cases of accidents caused by mines, in which two civilians were killed and three injured, were verified. In this regard, mention should be made of Decree 60-95 of 17 August 1995 which provides for the clearance of mines and other explosive devices from areas where returnees are being resettled. During the period under review, progress was made in talks on this issue with URNG.

85. Concerning the commitment to respect the human rights of wounded and captured combatants and the army's agreement to inform MINUGUA when members of URNG are killed, wounded or captured, the Mission received two reports concerning the deaths of two guerrillas, both of whom were buried without it being informed (see para. 42).

Participation of minors

86. In the course of verifying the events at Xamán, it was found that a minor was performing military service, in violation of Guatemalan law and the Convention on the Rights of the Child. The Mission has requested URNG to provide it with information on the recruitment and participation of minors.

Displaced persons, refugees and returnees

87. There is no doubt that the tragedy at Xamán (see paras. 25 to 32), which affected a peaceful community, is the most distressing event to have occurred since Guatemalan refugees began to return home. Moreover, on 16 December, two children from a returnee camp in Cantabal were hit by gunshots. Magdalena Caal Coc, aged 9, was killed and Santiago Quix Caal, aged 11, was injured. While it is not known who fired the shots, verification appears to rule out the possibility that they came from a nearby clash between the army and URNG. National bodies have not conducted the investigations essential to clarifying what happened.

88. The Mission and UNHCR are promoting a dialogue between returnees and the army. In Ixcán, Petén and Huehuetenango, informal agreements have been reached

between the army and returnee populations which reflect the spirit of the 8 October 1992 agreements (see para. 26). Moreover, at the army's request, UNHCR and the Mission are preparing courses for army officers on the return process, the rights of returnees and human rights in general.

89. With respect to the situation of impunity prevailing in the Reina del Ixcán area of Quiché where, as documented in previous reports, serious human rights violations were committed repeatedly, particularly against members of returnee communities, the arrest warrants for those responsible for such violations - former military commissioners, CVDC members, deputy mayors and other persons, led by a civilian - have yet to be enforced (A/50/482, annex, para. 152).

IV. INSTITUTION-BUILDING, INTERNATIONAL TECHNICAL AND FINANCIAL COOPERATION AND HUMAN RIGHTS PROMOTION AND EDUCATION

A. Institution-building

90. Under the Comprehensive Agreement, activities to strengthen national entities working for the protection of human rights, as a supplement to the task of verification, became a fundamental instrument for contributing to the exercise of such rights. The strategy of supporting improvements in the functioning of the system of justice through rapid impact projects made it possible to implement institutional solutions to that end. As part of that strategy, technical cooperation agreements were signed with the Public Prosecutor's Office (February 1995), the Supreme Court of Justice (August 1995) and the Counsel for Human Rights (September 1997), within the framework of the MINUGUA/UNDP Joint Unit established in January 1995.

Judiciary

91. On the basis of the agreement with the judiciary (A/50/482, annex, para. 157), MINUGUA began providing assistance to the Judicial Training School in order to help develop objective selection criteria for careers in the judiciary through the establishment of a continuing programme for the training of judges and magistrates. Furthermore, in conjunction with the Supreme Court of Justice, a pilot project for computerized legal information will be conducted in coordination with the national authorities in 12 courts, which will exchange information on case management, legal theory and case law with various bodies, with a view to expediting the handling of cases and improving the technical quality of legal decisions.

Public Defender's Office

92. Cooperation began with the establishment of the Technical Advisory Unit, made up of three international consultants and directors of the Public Defender's Office. Guidance and training is being provided to the Office's 28 public defenders in the management of cases and in the use of the new Code of Criminal Procedure, which will be used in the preparation of the handbook for public defenders. Since the Office can provide only limited coverage, the provision calling for the development of a plan for its expansion is an important one. The elaboration of such a plan will begin with an assessment of

the Office's functioning, which will require the genuine commitment of the national authorities.

Ministry of the Interior

93. With support from the Government of Venezuela, the Mission cooperated in strengthening the relationship between the National Police and the Public Prosecutor's Office in the area of criminal investigation by providing the services of two experts who assisted police and prosecutors for four months. Their final report identifies three major problems: (a) serious shortcomings, especially a shortage of human and material resources, which affect the possibility of conducting criminal investigations in a professional, technical and scientific manner; (b) duplication of efforts which, because the coordination and leadership required by the legal system are lacking, hampers investigations; and (c) the fact that the scientific means of analysing evidence in order to ensure effective criminal prosecution are scattered among institutions as diverse as the National Police, San Carlos University, the judiciary and the Public Prosecutor's Office, creating serious problems of coordination, analysis and safe-keeping of evidence.

94. Moreover, it was suggested that the National Police implement a shift system along the lines of the system to be applied by the Public Prosecutor's Office, as a first step towards addressing the lack of institutional coordination and ensuring a minimum of oversight and follow-up of investigations.

95. The Mission notes that judicial monitoring of the enforcement of sentences by enforcement judges is hampered by the fact that there are only two courts of enforcement. The lack of effective monitoring of the conditions in which sentences are served undermines the rights of convicted persons and is a breach of the legal duty to protect such persons.

96. In support of the development and application of a new policy in criminal matters (A/49/929, annex, para. 149), the programme for improving the prison system was launched, outlining structural guidelines for analysing and identifying the system's shortcomings. There is also a need to outline the basic principles of a prison law which would provide for reasonable standards of treatment to protect the rights of accused and convicted persons.

Public Prosecutor's Office

97. On 10 October, the agreement with the Public Prosecutor's Office was renewed and expanded, extending the programme for six months (A/50/482, annex, para. 159). New activities include advising the Attorney General on the drafting of general instructions for the technical organization of prosecutors' functions and advising the Council of the Public Prosecutor's Office on the adoption of regulations, including those governing the career of prosecutor.

98. Guidance and training in the management of cases exceeded the target set for the first period. A programme has been designed for overcoming the lack of coordination with the National Police and the inadequate supervision of the National Police by the Public Prosecutor's Office. This structural weakness,

which hampers the efficiency of investigations, will be tackled by implementing a system of shifts which will enhance institutional accountability and a regulated, supervised system for following up cases. Moreover, the handbook for prosecutors which is currently in preparation will help to expedite criminal prosecutions.

99. The Mission welcomes the willingness to cooperate shown by the Attorney General and other prosecutors. The increase in the number of oral proceedings in 1995 indicates that the system of justice is beginning to achieve the momentum necessary for it to function properly, at least as far as ordinary crimes are concerned.

Counsel for Human Rights

100. With the signing of the framework agreement on technical cooperation with the Counsel for Human Rights on 11 September, technical assistance in the form of on-the-job supervision was extended to the Counsel's Office, including special agreements on support for administrative management, for the department responsible for investigating human rights violations and for the establishment of the section dealing with indigenous peoples' issues. At the same time, the Mission is carrying out verification and institution-building tasks through the MINUGUA/Counsel for Human Rights Coordinating Committee. During the year, the Mission has carried out various activities in coordination with the Office of the Counsel for Human Rights, including training workshops and seminars in the area of verification. In the first half of 1996, the Mission will cooperate in the holding of another series of seminars on questions of international law and techniques for investigating complaints of human rights violations.

Presidential Human Rights Committee (COPREDEH)

101. Pursuant to the Comprehensive Agreement, from September 1995 onwards the Mission carried out cooperation activities with COPREDEH in the area of human rights education, particularly for civil servants and public schools.

Non-governmental organizations

102. The initial result of the study on non-governmental organizations conducted within the framework of the Joint Unit has been to provide a detailed directory on such organizations in Guatemala. The study will also help to identify more clearly what institution-building activities are needed by such organizations in order to enhance their technical capacity for bringing lawsuits and their capacity for administrative and financial management.

103. The Mission maintains an ongoing dialogue with non-governmental organizations and participates in various meetings on issues of common interest. Following the signing of the letter of intent between the Mission and the Inter-American Institute of Human Rights, a workshop was conducted on the application of international norms to the protection of human rights, with the participation of various non-governmental organizations.

Regional projects: access to the system of justice

104. The fact that the Guatemalan people, especially indigenous communities, do not have access to the judicial system is a serious obstacle to the enjoyment of human rights. Because of this discriminatory situation, the Agreement on Identity and Rights of Indigenous Peoples recognizes the need to promote the effective protection of the rights of indigenous peoples by establishing legal offices for the defence of indigenous rights and popular law offices, taking into account the customs that make up their own internal system of norms. In order to strengthen security before the law, the Government undertakes to promote the adoption by the legislature, with the participation of indigenous organizations, of laws that recognize traditional norms. Guatemala's cultural and linguistic diversity has led to the formalization, in the Code of Criminal Procedure, of the requirement that the State facilitate access to the system of justice by providing interpreters.

105. In order to facilitate access by the population to the system of justice, the Mission's regional offices are promoting meetings among members of the criminal justice system, thereby broadening the scope of the dialogue so that viable solutions can be found for the functioning of the justice system at the local level. The pilot projects being carried out in Quetzaltenango, Petén and Quiché are aimed at developing the most suitable models for popular law offices and establishing a system of court interpreters. In cooperation with the national authorities and within the framework of the MINUGUA/UNDP Joint Unit, there are plans to support the establishment of a centre for the administration of justice in Nebaj, Quiché, which will bring the judicial service closer to indigenous populations.

B. International technical and financial cooperation

106. Donor countries have responded in a timely manner to the activities of the Trust Fund (A/49/929, annex, para. 5). Their contributions demonstrate support for the United Nations strategy with respect to institution-building priorities within the framework of the MINUGUA/UNDP Joint Unit. The pooling of efforts and sharing of priorities between the United Nations and donors made a positive contribution to the smooth implementation of programmes in 1995.

107. As of late November 1995, total contributions (paid and/or pledged under international cooperation to the MINUGUA component of the Trust Fund for the implementation of activities programmed for 1995 and 1996 amounted to US$ 3.6 million, thanks to support from the Governments of Denmark ($200,000), the Netherlands ($360,000), Norway ($1 million), Sweden ($1.074 million) and the United States of America ($1 million). Taking into account resources provided through other means, in 1995 the Trust Fund's programme resources totalled $4 million. Moreover, an agreement was signed with Denmark's Human Rights Programme for Central America (PRODECA), under a $205,000 cost-sharing scheme administered by UNDP through the Joint Unit.

108. In other contributions, the Government of Venezuela quickly made the services of two police experts available to the criminal investigation support programme (see para. 93); on 31 August, the Government of Denmark signed an

agreement with MINUGUA providing the services of four professionals to help meet the Mission's need for qualified personnel; the Government of the United Kingdom pledged a direct donation to the Public Defender's Office for the purchase of office equipment; and the European Union made contributions for human rights education activities.

C. Education and promotion

109. Advantage was taken of the deployment of MINUGUA throughout the country to design a decentralized education strategy tailored to the country's ethnic and social diversity. Under that strategy, 650 talks explaining the Mission's mandate were held, attended by some 45,000 people. At the same time, over 350 human rights training seminars were conducted for over 15,000 participants, most of them human rights advocates and civilian officials. Efforts to train outreach persons to disseminate the contents of the Comprehensive Agreement were expanded to include the Agreement on Indigenous Rights.

110. The biggest obstacles encountered in the implementation of these activities have been illiteracy and ignorance of the peace process, the failure in some quarters to differentiate between protection of human rights and protection of crime and the lack of translators in indigenous languages. For 1996, there are plans to expand cooperation with non-governmental organizations and State entities in the training of potential outreach persons.

111. Experience has served to design a comprehensive project for the dissemination of and education in human and indigenous rights, through integrated mass public information campaigns that use media and messages tailored to the population's socio-economic and cultural context and give particular importance to the multi-ethnic nature of Guatemala. The campaigns envisage the distribution of posters, the posting of billboards along public roads, radio spots and press announcements in Spanish and in Mayan languages. A radio campaign has been designed for disseminating the contents of the Agreement on Indigenous Rights in 20 of the country's languages.

V. AGREEMENT ON IDENTITY AND RIGHTS OF INDIGENOUS PEOPLES

112. No significant progress has been made in the adoption of measures to promote the rights of indigenous peoples, as recommended to the Government by the Mission (A/50/482, annex, para. 178). The Government took piecemeal initiatives to explain the scope of the Agreement but made no systematic efforts to approach the Maya sectors of the Assembly of Civil Society (ASC) in order to pave the way for the joint commissions provided for under the Agreement.

113. Under the Agreement, the Maya sectors of ASC that are members of the Coordinating Office of Organizations of the Maya People of Guatemala (COPMAGUA) are required to convene the Maya, Xinca and Garífuna organizations to designate their representatives to the joint commissions. Although lack of resources hampered the initial efforts of COPMAGUA, international support enabled the consultation process to be launched. Various indigenous organizations have reproduced the Agreement and taken steps to distribute it to indigenous leaders

and communities. Moreover, Maya women's organizations established the Maya Women's Legal Defence Office and are trying to extend its services to include Garífuna and Xinca women.

114. With a view to intensifying dissemination, verification and institution-building activities, the Mission has expanded its technical capacity, has taken on new professional staff, including indigenous staff, and is recruiting new local indigenous interpreters.

VI. CONCLUSIONS FOR THE PERIOD FROM 21 AUGUST TO 31 DECEMBER 1995

115. During the period under review and despite some noteworthy progress, the overall situation continued to be cause for concern because of repeated human rights violations, the persistence of impunity and, in particular, the growing lack of public safety as a result of the State's failure to prevent criminal activity.

116. The Xamán tragedy (see paras. 25 to 32) has been the most serious incident since the Mission was set up. Its occurrence reveals the prevalence of a culture of intolerance, fed by decades of armed conflict and a pernicious rhetoric that identifies certain civilian sectors with URNG, which could lead to other extreme situations. The Mission underscores the reaction of President Ramiro de Léon Carpio, immediately after the event, when he took responsibility as Head of State, accepted the resignation of the Minister of Defence, dismissed the chief of the military zone, visited the affected community and proposed ways to make reparation.

117. Threats and intimidation continued to be directed against individuals and entities working for the protection of human rights by CVDC members and former military commissioners in rural areas and by unidentified groups operating in urban areas.

118. The Mission saw no decisive progress in the commitment to fight impunity. The basic lack of coordination among the bodies responsible for investigating and punishing crimes, the lack of determination on the part of institutions to investigate serious violations of human rights, the freedom with which illicit associations continue to operate and the protection extended to soldiers involved in crimes, along with other factors, remained the general rule. Nevertheless, the value of certain positive steps (see para. 56) should be recognized.

119. The high crime rates (see para. 13) and the State's failure to prevent, investigate and punish crimes have created a situation where the general public is unprotected, and lack of confidence in the national bodies responsible for combating crime has increased. Inaction by the State has encouraged individuals to carry weapons (see para. 73), self-defence groups to proliferate and "private justice" and "clean-up operations" to be carried out against alleged criminals (see para. 57).

120. As positive developments, the Mission can cite: (a) the meetings between the presidents of the three branches of government, which could provide the

framework for instituting a comprehensive policy against impunity; (b) the submission of the Inter-American Convention on Forced Disappearance of Persons to the legislative branch for approval; (c) greater readiness on the part of the Public Prosecutor's Office to cooperate in some investigations that have been stalled for months; (d) the plan to restructure the Office's Metropolitan Prosecutor's Department by instituting a shift system for prosecutors; and (e) the somewhat improved coordination, in a number of localities, between the Public Prosecutor's Office and the National Police.

121. The Mission values the legal dissolution of the military commissioners (see para. 56) as an important step in the fight against impunity. It did, however, verify situations where former commissioners committed abuses, claiming that they were working with the army.

122. The response of the Office of the Director of the National Police to the resolutions of the Counsel for Human Rights regarding the dismissal of police involved in violations marked something of an advance in the fulfilment of the commitment to purify and professionalize the security forces and was an example of respect for the Counsel's role.

123. The Mission received no complaints of violations of specifically political rights in connection with the electoral process. However, the low voter turnout made for a limited exercise of the right to vote, a right also affected by the fact that almost one third of the adult population is still not on the electoral roll.

124. The Mission received no complaints of violations of freedom of movement, but it did learn that, during some URNG propaganda activities, the free transit of persons had been hindered.

125. There were some disturbing signs of infringement of freedom of expression, such as the actions targeting journalistic activity and directed against two press entities (see paras. 48 and 49).

126. URNG did more to fulfil its commitment to end the suffering of the civilian population by using greater foresight in carrying out its military actions. This progress was encouraged by the army's prudent attitude towards such actions.

127. The Mission believes that the army's burial of the bodies of guerrillas without honouring its agreement to inform the Mission when URNG members are killed, wounded or captured, and court action to prevent investigations into whether such deaths occurred in combat, help to create doubts about compliance with Commitment IX of the Comprehensive Agreement (see para. 85).

128. In this latest period, URNG continued to violate the Comprehensive Agreement by making threats related to payment of the so-called "war tax" (see para. 83).

129. The Mission applauds the promulgation of the Law on the Personal Documentation of the Uprooted Population (see para. 46), whose impact on the difficult situation of that population is being studied and followed closely.

VII. FIRST YEAR OF INTERNATIONAL VERIFICATION (21 NOVEMBER 1994 TO 31 DECEMBER 1995): CONCLUSIONS AND RECOMMENDATIONS

130. The Mission, whose presence was requested by the parties as "a component of the overall verification of an agreement on a firm and lasting peace" (Comprehensive Agreement, sect. X, para. 2), performed its task of verification throughout the territory of Guatemala through 13 regional offices, based on the professional work of teams of civilian and police human rights observers and military liaison officers and following the methodology established in the MINUGUA handbook on verification procedures (see document A/49/856, annex, para. 5). The conclusions and recommendations that follow are based on the verification, between 21 November 1994 and 31 December 1995, of human rights and of compliance with the commitments made by the parties in the Comprehensive Agreement on Human Rights. The results of such verification are documented in this report and in the three previous reports submitted to the General Assembly (A/49/856 and Corr.1, A/49/929 and A/50/482).

131. The Mission is required to verify the observance of human rights, to which the Government reaffirmed its adherence in Commitment I of the Comprehensive Agreement, giving particular attention to the rights to life, integrity and security of person, individual liberty, due process, freedom of expression, freedom of movement and freedom of association, and political rights. It must also verify the parties' overall fulfilment of the other commitments made in the Comprehensive Agreement. Although only the Government can put most of these commitments into effect, URNG, in addition to recognizing the need to put an end to the suffering of the civilian population and to respect the human rights of wounded, captured and disabled combatants, also undertook, inter alia, "to respect the inherent attributes of the human person and to contribute to the effective enjoyment of human rights" (Comprehensive Agreement, fourth preambular paragraph).

A. Observance of rights accorded priority under the Comprehensive Agreement

132. During the first year of verification, the Mission received more than 7,700 complaints, 1,567 of which it declared admissible for verification (see appendix, table 1). It closed 1,078 (68.7 per cent) of the complaints admitted, verifying that violations, involving 3,161 victims, had occurred in 43.2 per cent of them. a/ Of the total number of cases in which verification confirmed that a violation had occurred, 64.2 per cent concerned the rights to life, integrity of person and individual liberty (see appendix, table 2) and responsibility was attributed to National Police officers in 24.5 per cent of them, to military commissioners in 17 per cent, to members of the army in 17 per cent, to members of CVDCs in 15.1 per cent and to members of URNG in 5.4 per cent. In those cases where verification confirmed a violation of the commitment concerning human rights and the internal armed conflict, responsibility was attributed to URNG in 92.5 per cent of cases and to the army in 5 per cent (it being unclear in one case which of the two parties was responsible).

133. According to the Comprehensive Agreement (sect. X, para. 5 (c)), the Mission must "determine whether or not a violation of human rights has occurred, on the basis of whatever information it may obtain in the exercise of the powers referred to" in that Agreement and "taking into consideration any investigations that the competent constitutional institutions may carry out". In 27.8 per cent of the total number of cases closed since it was set up, the Mission was unable to obtain sufficient evidence to determine whether or not a violation had occurred. This would seem to indicate that institutions are still finding it difficult and that the authorities do not have the capacity to investigate violations. The complicity of State agents and the fears of victims and witnesses further hinder the investigation of reported violations.

134. Right to life. Since the Mission was set up, this has been one of the rights most frequently violated, in that 23.2 per cent of corroborated complaints concern this right. The 555 complaints admitted can be broken down as follows: (a) extrajudicial executions or deaths in violation of legal guarantees which have gone unpunished (25.9 per cent); (b) attempted extrajudicial executions (10.4 per cent); and (c) death threats (63.7 per cent), reflecting a widespread climate of intimidation.

135. Right to integrity of person. The Government did not adequately guarantee this right, for 37 per cent of substantiated complaints concern it. During the period in question, the 411 complaints admitted fell into the following categories: (a) torture (6.3 per cent), an appalling practice which the administrative measures taken against certain officials involved in such cases have not managed to eradicate completely; (b) cruel, inhuman or degrading treatment (19.2 per cent); (c) excessive use of force (3.4 per cent); and (d) other threats (71.1 per cent).

136. Right to individual liberty. The Mission concludes that the Government did not safeguard this right adequately. Out of the total complaints corroborated, 14.2 per cent had to do with this right. During the period in question, the 142 complaints admitted fell into the following categories: (a) arbitrary detention or detention in violation of legal guarantees (59.9 per cent); (b) kidnappings (12.7 per cent); (c) enforced disappearances (7.7 per cent); and (d) forcible, unjust or discriminatory recruitment (19.7 per cent).

137. Right to due process. The precariousness of this right, brought out by verification, pointed to an almost generalized denial of justice, the cause being not only structures that are inoperative but also a lack of determination to enforce procedural norms. This right was the subject of 16.7 per cent of corroborated complaints. The 241 complaints admitted concerned: (a) procedural guarantees (12 per cent); (b) the right of habeas corpus (6.6 per cent); and (c) the right of access to the justice system (81.4 per cent).

138. Right to freedom of expression. Although it was observed that, in general, this right was widely exercised, the complaints received indicate that its observance was not fully guaranteed.

139. Right to freedom of association. The Government did not guarantee this right effectively, in that it did not act promptly when the right to form trade unions was threatened.

140. Right to freedom of movement. The Mission verified cases in which URNG violated this right.

141. Political rights. Aside from what is stated in paragraph 123, the Mission concludes that specifically political rights were respected.

B. Fulfilment of the other commitments made in the Comprehensive Agreement

Commitment to strengthening institutions for the protection of human rights

142. In general, the Government did not give due attention to the requests for information and the resolutions of the Counsel for Human Rights, nor did it take steps to improve the technical and material resources which he requires in order to perform his important function. It also took no action to remedy the serious shortcomings that prevent efficient action by the State institutions responsible for protecting human rights, and it responded too mildly when agents of the State threatened or put pressure on judges and prosecutors, thereby undermining their autonomy and freedom of action. All of this represents a failure to fulfil this commitment.

Commitment against impunity

143. The Mission concludes that, even though the Government, in compliance with the second sentence of paragraph 1 of section III of the Comprehensive Agreement, did not promote the adoption of measures to prevent the prosecution and punishment of persons responsible for human rights violations, the absence of an overall policy meant that this commitment remained unfulfilled, as regards the need to take firm action against impunity. The Mission also concludes that its own recommendations were not properly heeded, in that there was no evidence of vigorous action by the Government against the root causes of impunity indicated in the Mission's first report (A/49/856, annex, para. 202), namely: (a) the defective functioning of the Public Prosecutor's Office, the judiciary and the security forces responsible for preventing and punishing crime; (b) the existence of illicit associations linked with crime and with financial or other interests that may enjoy the support, complicity or tolerance of State agents; (c) the autonomy enjoyed by the army in its counter-insurgency and anti-subversive activities and also the procedures it uses in this sphere and the broad interpretation it gives to those concepts; (d) the control exerted over rural communities by military commissioners and CVDCs and (e) the proliferation of and lack of control over firearms in the possession of private individuals.

144. Verification of compliance with this commitment also shows that the lack of proper coordination between the Public Prosecutor's Office, the National Police and the judiciary has not been overcome; that the Public Prosecutor's Office has not instituted a disciplinary policy grounded in hierarchical oversight and corrective action against the conduct of prosecutors who obstruct an investigation or conduct it negligently; that the National Police has continued to function defectively, especially in criminal investigations, as a result, inter alia, of its structural shortcomings, lack of resources and the need for

training and professionalization; and that judges refrain from taking action in cases involving State agents and in so doing, are not subject to appropriate disciplinary measures.

145. Impunity also feeds on the fact that victims and witnesses are afraid to bring charges or cooperate in the investigation of serious crimes and human rights violations, revealing a distrust of the justice system which is, in turn, a consequence of the State's failure to fulfil its obligation to guarantee due protection to victims.

146. The Mission reiterates its concern at the impunity enjoyed by members of the army implicated in illegal acts, at the threats made against judges and prosecutors by members of the army or persons connected with it and at the interference by military interests in the administration of justice by the State. During the first year, the Mission encountered cases in which the army protected military personnel accused of illegal acts. The existence of a special court for trying members of the armed forces accused of offences that are not specifically military undermines the impartiality and independence of the judiciary and opens the door to the situation referred to in section III, paragraph 3, of the Comprehensive Agreement.

147. CVDC members and military commissioners committed with impunity violations of the right to life and the right to integrity and security of person, especially in rural areas. Furthermore, the prolongation of the armed conflict and the accompanying ideological rhetoric fomented the occurrence of such violations.

Commitment that there are no illegal security forces and clandestine structures

148. Verification revealed the very serious fact that organized illegal groups acted with impunity to commit serious crimes, facilitate and cover up the commission of crimes or participate in so-called "social cleansing" operations, in which they use criminal methods in place of the legal action of the security forces. In some acts committed by these groups, there are signs of participation or collusion by agents of the State, even without a political motivation. The Mission concludes that the Government did not fulfil this commitment because it failed to identify, disband and suppress such groups, whose power undermines the institutions whose job it is to combat them.

Commitment to continue the purification and professionalization of the security forces

149. The Mission observed that the serious shortcomings of the National Police blur the necessary distinction between military and police functions which is one of the prerequisites of professionalization. Furthermore, the purification measures undertaken by the Office of the Director of the National Police were not accompanied by the punishment of police accused of having committed crimes.

Commitment to regulate the bearing of arms

150. The Mission acknowledges the ongoing efforts by the National Police to confiscate weapons and the army's initiative of drafting a bill to tighten

controls on the sale of firearms. However, it believes that such steps are glaringly inadequate given the magnitude of the problem.

Commitment to guarantee freedom of association and freedom of movement

151. Although the Counsel for Human Rights is responsible for ascertaining whether CVDC membership is voluntary and for monitoring violations committed by CVDCs, the Mission, in the course of verifying the general commitment to human rights, found that some patrol members took a hostile attitude towards persons unwilling to join CVDCs. The Mission concludes that the Government honoured this commitment, in that it did not encourage the establishment of new CVDCs.

Commitment concerning military conscription

152. The Mission concludes that forcible recruitment for military service has virtually ceased, and it applauds the President's decision to retain only voluntary military service until such time as new legislation on the matter is adopted.

Commitment to safeguard and protect individuals and entities working for the protection of human rights, as well as their activities

153. The Mission concludes that the Government has not fulfilled this commitment effectively, especially since it failed to investigate exhaustively the numerous complaints of threats and intimidation against such entities and did not take special protective measures. The unit established within COPREDEH to deal with such threats did not achieve effective results.

Commitment to compensate and/or assist the victims of human rights violations

154. While not discounting the value of the information provided by the Government on the assistance given to the most vulnerable groups, the Mission believes that such assistance was not an adequate response to the recommendation to draw up a plan of action appropriate to the specific content of this commitment.

Commitment concerning human rights and the internal armed conflict

155. The Mission concludes that, over the course of the year, URNG committed acts which ran counter to the need to end the suffering of the civilian population. It notes, however, that in the context of its armed actions, URNG fulfilled its commitment to MINUGUA that it would respect the infrastructure of public utilities and refrain from destroying any more electric power pylons.

156. The Mission concludes that URNG violated the Comprehensive Agreement as regards the so-called "war tax" by its threats and reprisals against civilians and their property. While it is aware that ordinary criminals posing as guerrillas commit similar acts, the Mission believes that the very existence of this URNG policy creates an opening for such acts and helps to undermine public safety and increase the impunity of those who commit them.

C. Agreement on Identity and Rights of Indigenous Peoples

157. The Mission concludes that the Government's initiatives to promote implementation of the Agreement were limited and that adequate mechanisms for consultation with indigenous organizations, particularly in preparation for the joint commissions provided for under the Agreement, were not established.

D. General conclusions

158. Based on the results of its verification, the Mission concludes that serious and repeated human rights violations were committed in Guatemala which have not been investigated or punished.

159. Verification shows that the majority of such violations stemmed from action by agents of the State or groups linked to it and were made possible by the failure of the State to provide guarantees. However, they cannot be said to be the result of the application of deliberate government policy to violate human rights.

160. The Mission reaffirms its conviction, substantiated in previous reports, that impunity was the main obstacle to the enjoyment of human rights and that its persistence was attributable basically to the absence of a State policy for combating it, which prevented the identification and punishment of those responsible and heightened the public perception that justice cannot be obtained. The Government bears primary responsibility for this omission. One underlying problem of impunity is the complex array of interests that act to inhibit the determination to investigate and punish serious crimes and human rights violations, particularly in cases involving members of the armed forces and the police. Such interests include activities of illegal gangs, accused of murders, kidnappings and other serious crimes, which can count on the participation, support or complicity of agents of the State. The protection extended by the army to soldiers accused of illegal acts makes it responsible by virtue of its actions, a responsibility which the Government must also assume.

161. Verification allows the Mission to conclude that, over the course of the year, serious violations of human rights were also committed in the context of the armed conflict and that the need to end the suffering of the civilian population was ignored, especially as a result of actions by URNG members which also went unpunished.

162. To sum up, the Mission concludes that both the Government of Guatemala and the General Command of URNG are responsible, by act or omission, for the human rights violations and the failure to fulfil the commitments of the Comprehensive Agreement noted by the Mission in its reports.

163. Nevertheless, verification also allows it to conclude that, during the period referred to in this section, both the Government and URNG took some positive steps which amount to progress in complying with a number of commitments in the Comprehensive Agreement.

164. Among the positive steps taken by the Government, the Mission welcomes the following: (a) the virtual cessation of forcible recruitment for military service; (b) moderation in the use of force by the police and security forces; (c) the army's tendency to show restraint in the armed conflict; (d) the fact that it has not encouraged the establishment of new CVDCs; (e) the legal dissolution of the military commissioners; (f) the army's respect for the law in detaining some URNG members and turning them over to the courts; (g) greater determination on the part of officials of the Ministry of the Interior to investigate crimes; and (h) the guarantees given by the Government for the presence of the Mission and the normal exercise of its mandate, thereby also fulfilling the commitment in the Comprehensive Agreement to provide the fullest possible support to MINUGUA.

165. The Mission stresses the vital role played by President Ramiro de León Carpio in putting the Comprehensive Agreement into effect, ensuring that positive steps were taken and cooperating with MINUGUA.

166. Among the positive steps taken by URNG, the Mission notes the following: (a) fulfilment of the commitment to refrain from acts of sabotage against electric power pylons (see A/49/856, annex, para. 193); (b) the recent tendency to show restraint in its military activities in order to avoid unnecessary risks and injury to the civilian population; (c) the unilateral cessation of hostilities during the elections in order to promote the exercise of political rights; (d) the cooperation extended by the General Command to the Mission's work demonstrated by the monthly meetings in Mexico; and (e) careful consideration of the Mission's recommendations concerning fulfilment of the Comprehensive Agreement.

E. Recommendations

Recommendations to the Government

167. In exercise of the functions entrusted to it by the Comprehensive Agreement and based on its verification, the Mission has made in its reports a number of recommendations to the Government on the measures needed to promote full respect for human rights and faithful compliance with the Agreement. While the Mission is aware that it will take a certain amount of time to achieve that objective, it is deeply concerned that, during the period covered by its reports, no effective measures were taken to follow up the majority of these recommendations.

168. On the basis of the verification conducted and reiterating what it said in previous reports, the Mission considers it necessary to make the following recommendations to the Government, which is responsible for most of the commitments in the Comprehensive Agreement:

(a) Promote, as a matter of the utmost priority, a comprehensive policy against impunity that is binding on the various authorities of the State and on civil society. The Mission believes that making this policy effective will require not only the determination of the authorities but also the primacy of civilian authority and improvements in the management capacity of those areas of

the State which are responsible for implementing it, including the necessary administrative reforms;

(b) Adopt measures to overcome the lack of coordination between the Public Prosecutor's Office, the National Police and the judiciary, in order to make progress in the investigation of crimes;

(c) Provide special assistance to the Public Prosecutor's Office and the judiciary in investigating cases of serious human rights violations which have had a major impact on national life;

(d) Develop a public safety plan that envisages a thorough reform of the institutional bases of the National Police and of the procedure for selecting and training members of the police; and allocate sufficient resources to it to improve its capacity to prevent and investigate crime;

(e) Adopt an emergency plan for crime prevention and punishment, targeted at identifying, dismantling and punishing illegal groups formed to commit crimes and human rights violations, investigating their links with State officials or institutions and ensuring that the corresponding responsibilities are assigned where they belong;

(f) Take responsibility for the serious problem of impunity, which benefits members of the army accused of human rights violations, and cooperate with the bodies responsible for investigating and punishing such violations;

(g) Promote legislative reforms designed to limit military jurisdiction to specifically military crimes committed by members of the army;

(h) Promote activities to enhance the technical and material resources of the Office of the Counsel for Human Rights, whose role is stressed in the Comprehensive Agreement, and heed his resolutions;

(i) Promote the establishment of a career judicial service and provide the Public Defender's Office with a specific budget for performing its functions properly;

(j) Rigorously monitor the implementation of the measure dissolving the military commissioners and also the conduct of those individuals and take steps to prevent CVDCs from arrogating to themselves such indelegable tasks of the State authorities as the maintenance of security and public order;

(k) Promote legislative reforms to restrict and tightly control the proliferation of firearms in the possession of private individuals (see para. 73);

(l) Take steps to protect individuals and entities working for the protection of human rights, as well as their work, and step up the initiatives taken to put an end to claims that they are subversive;

(m) Institute legal reforms and programmes in the area of human rights which will increase political participation, voter registration and the exercise of the right to vote;

(n) Take steps to support ministries which have an impact on human rights, such as the Ministries of the Interior, Labour and Education;

(o) Draw up a plan of action for the compensation of victims of human rights violations (see A/49/929, annex, para. 195).

169. With regard to the Agreement on Identity and Rights of Indigenous Peoples, the Mission recommends that the Government should:

(a) Take steps to implement those aspects relating to human rights which have immediate force and application, indicating the commitments to which it will give particular attention in the short term, the means for fulfilling them, the action which must be taken prior to the establishment of the joint commissions provided for under the Agreement and the mechanisms for consultation with indigenous organizations;

(b) Prepare the legal reforms provided for in the Agreement;

(c) Begin programmes for disseminating the Agreement among various sectors of society;

(d) Draw up, as soon as possible, a comprehensive programme to combat ethnic discrimination, identifying its components and allocating the resources required for that purpose.

Recommendations to URNG

170. The Mission has also made recommendations in its reports to the General Command of URNG, based on its verification of Commitment IX of the Comprehensive Agreement and considering the commitment made by URNG, in the preamble to the Agreement, "to respect the inherent attributes of the human person and to contribute to the effective enjoyment of human rights". URNG has not implemented all the recommendations and, in the circumstances, the Mission is obliged to reiterate the following:

(a) Refrain from causing unnecessary injury to persons and damage to property, taking care not to create additional risks to life during attacks on military targets or during propaganda activities; respect the rights of the wounded and due assistance to the wounded; and restrict the use of mines or explosive devices in locations where this would put the civilian population at risk;

(b) Refrain from attacking civilian property in retaliation against individuals who refuse to pay the so-called "war tax" and desist from threats and any other type of reprisals linked to that tax.

171. The Mission makes a special appeal to the General Command to end the practice of the "war tax", a measure that would have a positive impact on the situation of human rights.

F. Role of the Mission

172. During its first year of activity, the Mission has been able to carry out its mandate in full. This would not have been possible without the cooperation of both parties and the assistance provided by the Government; the unwavering support of the Group of Friends of the Guatemalan Peace Process and the international community; and the welcome and cooperation extended by Guatemalan society, including non-governmental organizations, to the Mission and their positive reaction to its reports and work.

173. Fulfilment of its mandate was also made possible by the Mission's deployment in 13 offices throughout the country and its acceptance by local communities, as well as by the practical development of a verification methodology involving the interaction of civilian and police observers and military liaison officers. Another important aspect has been the linkage, from the outset, of verification and institution-building tasks through the development of a strategy, in the framework of the MINUGUA/UNDP Joint Unit, for cooperating with national bodies for the protection of human rights.

174. There have also been adverse reactions to the Mission's work, some of them violent, such as the armed attack on the Mission's regional office in the capital city and threats against some of its members. However, those reactions have not affected its normal operations in the country as a whole.

G. Final conclusions

175. On the basis of its verification, the Mission has realistically portrayed in its reports the disturbing human rights situation and the failure to follow its recommendations, which are given in a context offering some reasons to hope that those rights will be more fully enjoyed. These include:

(a) Progress in the peace process and the growing conviction of the parties and of Guatemalan society that the armed conflict must be ended without delay and that there must be national reconciliation;

(b) Progress in the political transition, for instance, the consolidation of new democratic institutions, the convergence of opinions in favour of the primacy of civilian authority, the normal conduct of elections, the emergence of new forms of representation of civil society and the national consensus surrounding the broadening of the political sectors incorporated in the Congress of the Republic. All of this is promoting a decline in the level of violence and in human rights violations which are clearly politically motivated;

(c) The growing participation of indigenous communities and leaders in various spheres of national life and the signing by the parties of the Agreement on Identity and Rights of Indigenous Peoples;

(d) Signs of a greater commitment to human rights, notably the awareness at the highest levels of government and in civil society that the fight against impunity is an urgent challenge to the nation, the growing role of non-governmental human rights bodies, and the ongoing monitoring, protection and defence activities of the Counsel for Human Rights.

Notes

a/ According to the MINUGUA verification handbook, a case is closed when there is sufficient evidence to make a determination as to whether or not a violation occurred, when it is established that the allegations were inaccurate or fell outside the Mission's mandate or when, after a reasonable period, it is impossible to obtain information that would permit a determination. In this last instance, a case can be reopened.

APPENDIX

Table 1. Complaints admitted, by category of alleged violation a/

	21 August to 31 December 1995	Yearly
Right to life		
Extrajudicial executions or deaths in violation of legal guarantees	30	144
Attempted extrajudicial executions	14	58
Death threats	63	353
Total	107	555
Right to integrity and security of person		
Torture	8	26
Cruel, inhuman or degrading treatment	12	20
Ill-treatment	21	59
Excessive use of force	7	14
Other threats	63	292
Total	111	411
Right to individual liberty		
Arbitrary detention	18	45
Detention in violation of legal guarantees	12	40
Kidnapping	11	18
Hostage-taking	0	0
Enforced disappearance	1	11
Forcible, unjust or discriminatory recruitment	5	28
Total	47	142
Right to due process		
Procedural guarantees	11	29
Right of habeas corpus	1	16
Right of access to the justice system	49	196
Total	61	241

	21 August to 31 December 1995	Yearly
Political rights	3	14
Total	3	14
Right to freedom of expression	2	5
Total	2	5
Right to freedom of movement	2	27
Total	2	27
Right to freedom of association	9	71
Total	9	71
Other violations in the internal armed conflict		
Harm or suffering inflicted on civilians	22	65
Attacks on civilian property	2	26
Attacks on property essential to the survival of the civilian population	0	3
Acts of terrorism	1	3
Failure to protect health workers and religious workers	1	2
Participation of children under 15 in the internal armed conflict	0	2
Total	26	101
Grand total	368	1 567

a/ The number of complaints in each category changed during the verification process.

Table 2. Cases closed, by category of violation established

(Yearly totals)

		Percentage
Right to life	108	23.2
Right to integrity and security of person	126	27.0
Right to individual liberty	66	14.2
Right to due process	78	16.7
Political rights	6	1.3
Right to freedom of expression	3	0.6
Right to freedom of association	17	3.6
Right to freedom of movement	22	4.7
Violations in the internal armed conflict	40	8.6
Total	466	100.0

Map No. 3839 Rev. 2 UNITED NATIONS
September 1995

Department of Public Information
Cartographic Section